# EVERETT *v.* EVERETT.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 1. Argued October 22, 1909.—Decided November 29, 1909.

Where the fundamental fact in issue in a suit by a wife for separate maintenance is whether there was a marriage, and the court having jurisdiction finds that the wife's petition should not be granted but should be dismissed, the courts of another State must, under the full faith and credit clause of the Constitution, regard such decree as determining that there was no marriage even though the husband may have asserted other defenses; nor can the wife, in a suit depending solely on the issue of whether there was a marriage, prove by oral

as to the issues made. We concur with the Court of Appeals of New York in holding that as the Probate Court had jurisdiction of the parties and the subject-matter, its judgment, rendered after hearing, that the plaintiff was not entitled to the relief demanded by her and that her petition be dismissed, it must be taken, upon the record of this case, that the latter court determined against the plaintiff the fact of her being the wife of the defendant at the time she sought separate maintenance and support.

It is doubtful whether the plaintiff, in her pleadings or otherwise, sufficiently asserted any right belonging to her under the Constitution of the United States. But if it were assumed that she did, the result, even upon that hypothesis, is that, upon the present showing by the plaintiff, there is no substantial ground to contend that the court below did not give such faith and credit to the judgment of the Probate Court of Massachusetts as were required by the Constitution, and, therefore, this court has no authority to review the final judgment of the New York court. The writ of error must be dismissed.

*It is so ordered.*